

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

ROBIN HUTSON,

Plaintiff,

- against -

MIDWEST-SOUTHEASTERN EQUIPMENT
DEALERS SERVICES, INC.

Defendant.

Docket No. 3:20-cv-1019

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Robin Hutson (“Hutson” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Midwest-Southeastern Equipment Dealers Services, Inc. (“Midwest-Southeastern Equipment” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of the Charleston Place Hotel, owned and registered by Hutson, a professional photographer. Accordingly, Hutson seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in Wisconsin.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Hutson is a professional photographer in the business of licensing her photographs for a fee has a usual place of business in Boston, MA.

6. Upon information and belief, Midwest-Southeastern Equipment is a domestic business corporation duly organized and existing under the laws of the State of Wisconsin, with a place of business at 5330 Wall Street, Suite 100, Madison, WI 53718. Upon information and belief, Midwest-Southeastern Equipment is registered with the Wisconsin Department of Corporations to do business in Wisconsin. At all times material hereto, Midwest-Southeastern Equipment has owned and operated a website at the following URL: www.MSEDA.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Hutson photographed the Charleston Place Hotel (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Hutson is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 2-215-994.

B. Defendant's Infringing Activities

10. Midwest-Southeastern Equipment ran the Photograph on the Website. See: <https://mseda.com/about/annual-meeting/>. A screenshot of the Photograph on the Website is attached hereto as Exhibit B.

11. Midwest-Southeastern Equipment did not license the Photograph from Plaintiff for the Website, nor did Midwest-Southeastern Equipment have Plaintiff's permission or consent to publish the Photograph on the Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Midwest-Southeastern Equipment infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Midwest-Southeastern Equipment is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Midwest-Southeastern Equipment have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
DEFENDANT
(17 U.S.C. § 1202)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Upon information and belief, Midwest-Southeastern Equipment intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

19. The conduct of Midwest-Southeastern Equipment violates 17 U.S.C. § 1202(b).

20. Upon information and belief, Midwest-Southeastern Equipment' falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

21. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Midwest-Southeastern Equipment intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph. Midwest-Southeastern Equipment also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

22. As a result of the wrongful conduct of Midwest-Southeastern Equipment as alleged herein, Plaintiff is entitled to recover from Midwest-Southeastern Equipment the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Midwest-Southeastern Equipment because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

23. Alternatively, Plaintiff may elect to recover from Midwest-Southeastern Equipment statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Midwest-Southeastern Equipment be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);

4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded punitive damages for copyright infringement;
6. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded attorney's fees and costs;
8. That Plaintiff be awarded pre-judgment interest; and
9. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
November 7, 2020

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